



POLICE DEPARTMENT

May 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Victor Veintimilla
Tax Registry No. 931371
114 Precinct
Disciplinary Case No. 2012-7348

Police Officer Michael McDonald
Tax Registry No. 940445
Housing Borough Bronx/Queens
Disciplinary Case Nos. 2012-7349 & 2012-8693

The above-named members of the Department appeared before me on April 3, June 16, August 29, 2014, and February 17, 2015, charged with the following:

Disciplinary Case No. 2012-7348

1. Said Police Officer Victor Veintimilla, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to obtain medical assistance for Person A in regards to a domestic incident.

Interim Order 34, Page 3, Paragraph 1 – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

2. Said Police Officer Victor Veintimilla, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to take photographs of visible injuries suffered by Person A in regards to a domestic incident.

Interim Order 34, Page. 4, Paragraph 2(d) – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

3. Said Police Officer Victor Veintimilla, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to determine whether a valid order of protection had been obtained by Person A in regards to a domestic incident.

Interim Order 34, Page 4, Paragraph 3(b) – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

Interim Order 34, Page 5, Paragraph 6(a), 6(b) and 6(c)

Interim Order 34, Page 6, note

4. Said Police Officer Victor Veintimilla, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to prepare a New York State Domestic Incident Report involving Person A.

Interim Order 34, Page 9, Paragraph 17 – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

5. Said Police Officer Victor Veintimilla, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed to use the proper radio code disposition in order to finalize a domestic incident.

Interim Order 34, Page 10, Paragraph 18 – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

6. Said Police Officer Victor Veintimilla, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to prepare a Complaint Report for Person A in regards to a domestic incident.

Interim Order 34, Page 10, Paragraph 19 REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

7. Said Police Officer Victor Veintimilla, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to prepare an aided report worksheet (PD304-152b) for Person A.

P.G. 206-02, Page 1, Paragraph 1 – PREPARATION OF AIDED REPORT
WORKSHEET

Disciplinary Case No. 2012-7349

1. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to obtain medical assistance for Person A in regards to a domestic incident.

Interim Order 34, Page 3, Paragraph 1 – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

2. Said Police Officer Michael McDonald, while assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to take photographs of visible injuries suffered by Person A in regards to a domestic incident.

Interim Order 34, Page. 4, Paragraph 2(d) – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

3. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to determine whether a valid order of protection had been obtained by Person A in regards to a domestic incident.

Interim Order 34, Page 4, Paragraph 3(b) – REVISION TO PATROL GUIDE 208-36
"Family Offenses/Domestic Violence"

Interim Order 34, Page 5, Paragraph 6(a), 6(b) and 6(c)

Interim Order 34, Page 6, note

4. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to prepare a New York State Domestic Incident Report involving Person A.

Interim Order 34, Page 9, Paragraph 17 – REVISION TO PATROL GUIDE 208-36
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7. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on-duty, on or about March 22, 2012, at a location known to this Department, in Queens County, failed and neglected to prepare an aided report worksheet (PD304-152b) for Person A.

P.G. 206-02, Page 1, Paragraph 1 – PREPARATION OF AIDED REPORT
WORKSHEET

Disciplinary Case No. 2012-8693

1. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on duty, on or about May 21, 2012, failed to complete a proper preliminary investigation in that after being informed that the complainant had been a victim of a crime failed to complete a Complaint Report Worksheet and instead directed the complainant to a different command.

Operations Order 5, issued January 17, 2012 – PROPER PRELIMINARY
INVESTIGATIONS OF COMPLAINTS,
COMPLAINT RECORDING AND
ACCURATE CLASSIFICATION OF
COMPLAINTS

2. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on duty, on or about May 21, 2012, having been directed by New York City Police Sergeant John Aspinwall, Tax No. 924901, to complete a complaint report, failed and neglected to comply with said order.

P.G. 203-03 Page 1. Paragraph 2 – COMPLIANCE WITH ORDERS

3. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on duty, on or about May 21, 2012, failed to use the proper radio code disposition in order to finalize a job.

Interim Order 7, P.G. 206-03, Page 1, Paragraph 3 – VIOLATIONS SUBJECT TO
COMMAND DISCIPLINES

4. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on duty, on or about November 7, 2012, failed to report sick at least two (2) hours before the start of his scheduled tour.

Interim Order 27, Patrol Guide 205-01 – REPORTING SICK

5. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on duty, on or about November 7, 2012, being scheduled to perform a tour of 1600 until 0400 hours, said Officer was absent without leave for over four (4) hours.

P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE OF DUTY - GENERAL
P.G. 205-18, Pages 1 and 2 – ABSENT WITHOUT LEAVE

6. Said Police Officer Michael McDonald, assigned to the 114th Precinct, while on duty, on or about November 7, 2012, wrongfully engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer sent a message to New York City Police Sergeant James Heffernan, Tax No. 896421, that he was in Suffolk county, which was not true.

Interim Order 26, P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

The Department was represented by Jamie Moran, Esq., Department Advocate's Office.

Respondents Veintimilla and McDonald were represented by John Tynan, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case Nos. 2012-7348 & 2012-7349

Respondents Veintimilla and McDonald are found Not Guilty of the misconduct set forth in Specification No. 1. They are found Guilty of the remaining charges.

Disciplinary Case No. 2012-8693

Respondent McDonald is found Guilty of all Specifications.

Disciplinary Case Nos. 2012-7348 & 2012-7349

Background

Person A had an order of protection against her ex-fiancé, Person B.¹ She also had an ongoing relationship with officers in the Domestic Violence Unit (DVU), who would visit with her daily when Person B was released from prison.

On March 21, 2012 in the evening, Person A was walking her dog. About a half a block away from her house, she saw Person B wearing black rubber gloves and holding a bucket. He said, "Die, you fucking cunt" and then threw a liquid on her. She felt a burning sensation on her right side, on her arm, leg and stomach. She went home, stripped her clothes off and passed out while in the shower. The next morning she called 911.

Responding to a radio transmission at around 11:20 a.m., Respondents arrived in a patrol car in front of Person A's house. Person A came over to speak with Respondents while they remained in the car. Exactly what was said is in dispute.

After Respondents left, Person A left a message with the DVU unit about what happened. She also called a friend, who drove her to [REDACTED]. She arrived at the hospital at about 1:00 p.m. She stated that she was diagnosed with second and third degree wounds from acid. The hospital prescribed antibiotics and pain medication. Her wounds were cleaned by debridement. She left the hospital 2 1/2 hours later. At about 4:30 p.m. the officers from DVU arrived. They took pictures, filled out a report, and had her write out a statement.

¹ Person A's assertion that she had a valid order of protection appears to have been validated. A complaint report taken after Person A came back from the hospital stated, "C/V states she has a valid Supreme Court Order of Protection 2585/2010 dated 05/09/2011, expires 05/08/2016." (Court Exhibit 1).

The pictures taken showed burns to the right side of her body, including her arm, her upper torso and thigh. (Department's Exhibits (DX) 2A, B, C).

Person B was arrested on March 23, 2012. He was charged with a felony assault.
(Court Exhibit 1 is the complaint and arrest reports.)

The issue before this tribunal is whether, based on Person A's statements to them, Respondents were required to take her to the hospital; prepare domestic violence, complaint and aided reports; take photographs and call in the radio code disposition 10-93F.

Person A testified that she told Respondents that the night before, while she was walking her dog a block away from her home, she had a liquid thrown on her by her ex-fiancé, that the substance was "eating my body, I'm injured," and that she had an order of protection. She showed them injuries to her arm and thigh. Respondents told her to call the DVU.

Respondents conceded that they did not take Person A to the hospital, did not take pictures of any injuries, did not determine whether she had a valid order of protection, and did not prepare a domestic incident, complaint or aided report. Respondents asserted that Person A declined their offer to call her an ambulance. They maintained that, based on what they were told, they had no reason to believe a crime had occurred and therefore no reason to take pictures or prepare reports. Based on the information they were given, they believed that they used the proper radio code disposition.

Analysis

Specification Nos. 1 through 7 in Case No. 2012-7348 and Case No. 2012-7349 are exactly the same for Respondents Veintimilla and McDonald. They all relate to the same incident which took place on March 22, 2012 in Queens County.

Specification No. 1

Specification No. 1 alleges that, on March 22, 2012 in Queens County, Respondents failed to obtain medical assistance for Person A regarding a domestic incident.

Under Interim Order (IO) 34 pg. 3 par 1, officers are required to obtain medical assistance if requested or if the need is apparent.

Respondents both testified that they offered to call an ambulance for Person A several times and she consistently refused, saying she would go to the hospital on her own later. According to both Respondents, Person A said she had a relationship with New York Presbyterian Hospital and felt more comfortable going there with a friend. They said that she only wanted their advice.

When speaking with the 911 operator, Person A indicated that she did not want to go to the hospital, saying "I'm scared they are going to keep me." Person A also conceded that she does not like to go to hospitals. (DX1 and 1A are the recording and transcript of the 911 call.) Although the 911 operator explained to her a couple of times that the police could not make a medical assessment for her, Person A wanted Respondents to assess whether it was necessary for her to go to the hospital and to advise her. The operator also informed her that if she was more comfortable seeing her private doctor, she should do so.

Person A's reluctance to go to the hospital was further demonstrated by her not calling the police until later the next day. When she woke up she gave her dog prescribed medication and food for the dog's medical condition. This took about an hour. She took care of herself by dressing her own wounds and said this took her "a while." Presumably she knew how to do this because she had taken classes in nursing. Then at about 11:00 a.m. she called 911. She indicated that until she went to the hospital, she did not believe that her injuries were as serious as they turned out to be. Person A did not ask Respondents to take her to the hospital.

Person A's reluctance to go to the hospital and her conversation with the 911 operator give credence to Respondents' testimony that they offered to call EMS several times and she declined. Person A stated she did not request assistance. There was not sufficient evidence to demonstrate that the need was apparent because it seemed that Person A was able and wanted to go to the hospital or to her own doctor herself.

Therefore, Respondents are found Not Guilty of Specification No. 1.

Specification No. 3

Specification No 3 alleges that Respondents failed and neglected to determine whether a valid order of protection had been obtained by Person A regarding a domestic incident.

Person A testified that she told Respondents she had a valid order of protection. Respondent McDonald, the officer she spoke with at the window of the RMP, confirmed that she told him that she had an order protection against her ex-fiancé who she had just seen the night before a block away from her house. Respondent Veintimilla testified that Person A did not mention anything about an order of protection. However, in his official Department interview on

March 28, 2012, after being asked whether Person A referred to an order of protection, Respondent Veintimilla replied, "She mentioned that she has one, but she didn't provide a copy or a number or anything that we could have probably made a further phone call."

Both Respondents knew from Person A that domestic violence officers visited her on a regular basis. Both knew that she had been beaten in the past and had bruises on her body from the person against whom she had an order of protection.

Under IO 34, pg 4, par 3(b), officers are required to determine whether a valid order of protection has been obtained by the complainant. If the order of protection cannot be produced, the officer must use the Central Records Division intranet database application to search for orders of protection issued by a New York City court. If the computer system is down or the order was issued outside New York City, then the officer must telephone Central Records Division, Identification Section. If the Identification Section reports no orders of protection on file then the officer must telephone the precinct where the incident occurred and ask an authorized member of the service to conduct an order of protection database inquiry. If the precinct of occurrence is unable to conduct the inquiry, the officer must request the Communications Section dispatcher conduct the inquiry. (IO 34 pg. 5, par 6) If a person has violated an order of protection, that person has committed criminal contempt.

Both Respondents indicated that the burden was on Person A to provide details about the order of protection. But once Respondents learned about an order of protection, the responsibility to learn the necessary details was theirs, not the complainant's. Respondent McDonald did admit that Person A was not required to show him her order of protection and that, as a police officer, he had the ability to search for the order of protection by her name or by the

offender's name. Yet although he was the officer speaking with Person A, Respondent McDonald could not remember if he asked Person A what the order of protection was about, when it was issued, or if it was a full stay away order of protection. He did not ask the name of the person who the order of protection was issued against or what caused the court to issue an order of protection for her.

Respondent McDonald also did not check his mobile terminal because it was not working. He did not call the 114 Precinct to find out if the complainant had an order of protection. He did not call anyone or conduct a computer search.

Respondent McDonald knew that a full order of protection would require the offender to stay away from the person's place of work and home. He knew that Person A was walking around the block from her home. He explained that whether an order of protection had been violated would depend on the distance the complainant was from the offender. But he failed to ask Person A the distance her ex-boyfriend was from her. Nor did he offer to get out of his car and walk to the spot where she said she saw him.

While Respondent Veintimilla did remember hearing about the liquid, Respondent McDonald maintained that he did not recall Person A saying that a liquid was thrown at her. Respondent McDonald agreed in substance that if he had heard a liquid was thrown at her, this would constitute a criminal complaint.

By their own testimonies, separately and together, Respondents had more than enough information which required them to check whether Person A had a valid order of protection against the person she said she had seen the night before. Therefore, Respondents are found Guilty of Specification No. 3.

Specification Nos. 4, 5 and 6

Specification No. 4 alleges that Respondents failed and neglected to prepare a New York State Domestic Incident Report involving Person A.

Specification No. 6 alleges that Respondents failed and neglected to prepare a Complaint Report for Person A for a domestic incident.

As Respondents learned enough to determine whether a valid order of protection existed, they were also required to prepare a Domestic Incident Report and a Complaint Report for the domestic incident. They knew that a block from her house Person A had seen her ex-boyfriend or ex-fiancé against whom she had an order of protection, they knew that Person A had an ongoing relationship with DVU, and they knew that she had called them for "advice." Between the two of them they knew that some sort of liquid had been thrown at her. According to Respondent McDonald, Person A said "she was hurt" and "jittery" and "nervous."

Person A's statements to the 911 operator demonstrated that even if Person A was not prepared to go to the hospital she was, at a minimum, expecting the police to take a domestic violence report. But even if a complainant is uncooperative, an officer is still required to take down whatever information he can. Instead of preparing the appropriate reports, Respondents told Person A to speak with the domestic violence counselors after getting her medical records at the hospital. Once again, Person A's relationship with domestic violence counselors did not relieve Respondents of the responsibility of preparing the necessary reports but should have alerted Respondents to the necessity of preparing the domestic incident and accompanying complaint reports.

Therefore, Respondents are found Guilty of Specification Nos. 4 and 6.

Specification No. 5. alleges that Respondents failed to use the proper radio code disposition in order to finalize a domestic incident.

Respondents have been found Guilty of Specification Nos. 4 and 6 because they failed to follow proper procedures regarding a serious domestic incident. They both maintained that no crime had been committed and that there was nothing they could do. This was why to close the job, they used a 10-90Y, indicating an unnecessary call. Having failed to follow proper procedures for a domestic incident, they also failed to use the proper radio code disposition. Had the job been handled properly, Respondents would have closed the job using 10-93F to indicate a domestic incident requiring the preparation of a complaint and domestic incident report.

Therefore, Respondents are found Guilty of Specification No. 5.

Specification Nos. 2 and 7

Specification No. 2 alleges that Respondents failed and neglected to take photographs of visible injuries suffered by Person A regarding a domestic incident.

Specification No. 7 alleges that Respondents failed and neglected to prepare an aided report worksheet (PD304-152b) for Person A.

Respondents claimed that Person A had no visible injuries that required photographs be taken or that an aided report be prepared. Both saw injuries on part of Person A's forearm that she showed them, but thought that her scabs looked older than from the night before. Both admitted to not having any medical training and that scabbing occurs at different rates.

Respondent McDonald claimed that Person A was not able to point to any injury she had from what happened the night before. He indicated that he believed that the injuries that

Person A discussed were old bruises from past assaults from the ex-boyfriend she saw the night before. Yet Respondent McDonald did not bother to ask Person A how long ago the "past" was or when she received these bruises. He claimed that, despite no medical training and his acknowledgement that wounds can heal at different rates, he could tell just by looking at the wound that it had not occurred the night before. Respondent McDonald later conceded on cross-examination that he was unable to tell whether Person A's injuries were sustained a day or three days ago. He also agreed that an aided report can be filled out if a person is injured but does not want to go to the hospital.

Respondent Veintimilla's testimony contradicted his partner's. Respondent Veintimilla indicated that Person A wanted them to look at her injuries. According to Respondent Veintimilla, she pointed and gestured at her body to show where the liquid was thrown on her. Person A did not know what the liquid was and Respondent Veintimilla acknowledged that the liquid could have been anything.

Respondents also indicated that they did not take photographs because, as male officers, they were not allowed to take intimate pictures of a woman's body. Respondent McDonald testified that Person A tried to show him an injury which was "somewhere around her stomach." He told her she could not show this to him.

While male officers cannot view areas on a female's chest and groin area, they can call over the radio to send a female officer with a camera to take a picture of the groin or chest area of a female victim. Contrary to Respondent McDonald's testimony, officers can ask a woman to lift her shirt up to view her stomach and can take a picture of a female's torso area.

Respondents' assertion that there were no visible injuries is not credible. Both admitted to seeing injuries on Person A's forearm. They both claimed her injuries were old, but could not support their claims. By their own admissions, they had no medical training to determine how old her injuries were. They did not even ask Person A when she actually sustained her injuries, as any investigator, medical or otherwise, would do. Also, the fact that they asked her several times whether she wanted to go to the hospital indicated that they knew the injury could potentially be serious. Finally, the seriousness of Person A's wounds can be seen by looking at the pictures taken by DVU later that day. (DX 2A, B, C).

Therefore, Respondents are found Guilty of Specification Nos. 2 and 7.

Case No. 2012-8693

Specification Nos. 1, 2 and 3

Background

It is not disputed that on May 21, 2012 Sergeant John Aspinwall was assigned as a patrol supervisor and that he responded to a radio run of a robbery. He interviewed the complainant at her home address in Queens. Person C told Aspinwall that earlier that day while she was walking a dog in Brooklyn, she was the victim of a "strong-arm robbery." (DX 7 is the complaint report.)

Respondent McDonald and his partner, Officer Talese², arrived after Aspinwall had concluded his interview. Aspinwall left Respondent McDonald and his partner in charge and then resumed patrol.

² Officer Talese, who has since retired from the Department, was not charged by the Department Advocate's office because Aspinwall could not remember if Talese was present when he gave Respondent instructions.

After speaking with Person C and ascertaining that the robbery occurred in another precinct, Respondent McDonald instructed her to go to the other precinct herself with her complaint. Respondent McDonald marked the radio disposition as 10-91, non-crime corrected.

Later that day back at the 114 Precinct, Aspinwall was surprised to learn that the 94 Precinct had called to find out why they had sent the complainant to them and not taken the report.

What is in dispute is what Aspinwall said to Respondent McDonald before he resumed patrol and whether Respondent was required to prepare a complaint report.

Analysis

All three Specifications occurred on May 21, 2012.

Specification No. 1 alleges that Respondent McDonald failed to complete a Complaint Report Worksheet for a victim of a crime and instead directed the complainant to a different command.

Specification No. 2 alleges that, after being directed by Sergeant John Aspinwall to complete a complaint report, Respondent McDonald failed and neglected to comply with this order.

Specification No. 3 alleges that Respondent McDonald failed to use the proper radio code disposition in order to finalize a job.

Sergeant Aspinwall credibly testified that he instructed Respondent McDonald to prepare a complaint report and a lost/stolen property form. The proper procedure has always been to

refer the complaint, not the complainant. When Aspinwall learned that this procedure had not been followed, he also learned that the complainant, after taking public transportation, may have "arrived at the 94th Precinct in tears".

Respondent McDonald claimed that when he and his partner arrived at the scene, the sergeant pulled them aside and explained that "he had just interviewed the complainant and she had said that she had been robbed a couple of hours earlier somewhere in Brooklyn and to take it from there." Respondent McDonald claimed that Aspinwall did not direct him to prepare a complaint report. However, even if Aspinwall had not given this direction, Respondent McDonald was still required to prepare the proper paperwork.

Respondent stated that Person C wanted to go to the precinct herself rather than have him prepare the complaint. Even if Person C had insisted on this, Respondent McDonald was still required to follow the procedure of preparing the complaint. Respondent McDonald suggested that by sending the complainant to the precinct herself, he saved her the embarrassment of having to repeat her story. As the Advocate pointed out, by sending Person C to another precinct, he put her in the position of having to repeat her story three times.

Respondent McDonald further claimed that he marked the job as non-crime corrected because the crime did not occur in his precinct.

This Court did not find Respondent McDonald's claims and excuses credible or mitigation for failing to follow proper procedures. Accordingly, Respondent McDonald is found Guilty of Specification Nos. 1, 2 and 3.

Specification Nos. 4, 5 and 6

Background

On November 7, 2012 the 114 Precinct was still working 12-hour tours due to the aftermath of Hurricane Sandy. Respondent McDonald was at his residence with his girlfriend. At about 3:24 p.m. Sergeant Brian Caltabiano, assigned as the traffic and training sergeant, received a text message from Respondent McDonald. In the message Respondent McDonald was requesting an emergency day off to watch his sister's children. Caltabiano relayed the request to the commanding officer and it was denied. When this denial was communicated to Respondent, Respondent McDonald texted back to Caltabiano, in substance, "Well, I will just go sick then."

At about 4:00 p.m., when Respondent McDonald's tour was to begin, Sergeant Casey Morgan took over for Caltabiano as patrol supervisor. Morgan sent Respondent McDonald a text message at about 4:36 p.m. asking him where he was. About a half hour later Respondent McDonald replied to Morgan's message, asking if he was approved for regular sick. Within the next hour Morgan sent four messages, telling Respondent McDonald in substance that unless he called the desk to get approval for regular sick leave, he would be considered AWOL. For over an hour, Morgan sent Respondent McDonald text messages asking him for his address. At 7:18 p.m. Respondent McDonald sent Morgan a text message saying, "If I get approved for reg sick I give address." During this time, Respondent McDonald was also texting Sergeant James Heffernan asking to go sick. He was told to call the desk but that the CO was not taking any excuses. Respondent McDonald then texted that he was having problems with reception. When

asked where he was, Respondent texted, "Out in Suffolk at the moment." (DX 3 and 5 are photographs of these text messages.)

As per Department protocol for officers deemed AWOL, Sergeant Timothy Costigan was sent to Respondent's residence in [REDACTED] [REDACTED]. There he discovered Respondent and instructed Respondent to call the desk for a sick day. Respondent then called the sick desk using either the cell phone or the land line at his house. Costigan recalled that Respondent got through to the desk after making just one call. (DX 4 is a Fitness for Duty Report, prepared by Costigan, finding Respondent to be fit for duty. DX 6 is the page from the Medical Division's Sick Reporting System, showing that Respondent McDonald went sick at 8:41 p.m. that day.)

Analysis

Specification No. 4 alleges that Respondent McDonald failed to report sick at least two hours before the start of his scheduled tour.

Specification No. 5 alleges that Respondent McDonald was absent without leave for over four hours.

It is not disputed that Respondent McDonald did not report sick at least two hours before the start of his scheduled tour. He did not report sick until more than two hours after his scheduled tour and only after he was directed to do so in person by a member of service who had to come to his residence. By failing to be present for duty and failing to report sick, Respondent was deemed absent without leave.

Respondent argued that communicating by text should be sufficient in this day and age. A request by text message or email is not the proper procedure under *Patrol Guide* 205-01. An

officer has to notify a supervisor by telephone or in person when requesting a sick day. Morgan pointed out that without hearing Respondent's voice he could not even be certain that it was actually Respondent making the request.

Accordingly, Respondent McDonald is found Guilty of Specification Nos. 4 and 5.

Specification No. 6 alleges that Respondent McDonald sent a message to Sergeant Heffernan, that he was in Suffolk County, which was not true.

When confronted with his text message (DX 5), Respondent could not deny that he communicated that he was in Suffolk. It is undisputed that Respondent texted that he was in Suffolk County when he was not, but was at his residence. Therefore, Respondent McDonald is found Guilty of Specification No. 6.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent McDonald was appointed to the Department on January 9, 2006. Respondent Veintimilla was appointed to the Department on July 1, 2002. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

For his misconduct in Case No. 2012-7348, the Department Advocate recommended that Respondent Veintimilla forfeit 30 vacation days and be placed on one-year dismissal probation. For his misconduct in Case No. 2012-7349 and Case No. 2012-8693, the Department Advocate

recommended that Respondent McDonald forfeit 45 vacation days and be placed on one-year dismissal probation.

Oftentimes victims of violence may be ambivalent about getting help or treatment. Person A may have been wavering about whether to go the hospital and genuinely wanted advice. Her reluctance to go, her wanting advice and her previous relationship with DVU did not relieve Respondents of their obligation to prepare the proper paperwork and take photographs.

However, based on case precedent, the Advocate's recommended penalty for Respondent Veintimilla is excessive in light of his record and having no previous disciplinary history. Therefore, it is recommended that Respondent Veintimilla forfeit 30 vacation days.

Considering that Respondent McDonald also displayed a serious lack of consideration toward another crime victim in another case and that in the aftermath of Hurricane Sandy he caused an improper allocation of resources by lying to his superiors about his location, the Advocate's recommended penalty for Respondent McDonald is appropriate. Therefore, it is recommended that Respondent McDonald be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year, during which time he will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further recommended that Respondent McDonald forfeit 45 vacation days.

POLICE OFFICER VICTOR VEINTIMILLA
POLICE OFFICER MICHAEL MCDONALD

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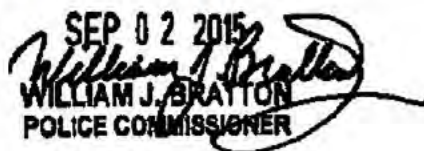
without a further hearing. It is further recommended that Respondent McDonald forfeit 45 vacation days.

Respectfully submitted,

 RM

Amy J. Porter
Assistant Deputy Commissioner – Trials

APPROVED

SEP 02 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER VICTOR VEINTIMILLA
TAX REGISTRY NO. 931371
DISCIPLINARY CASE NO. 2012-7348

In 2013 and 2014, Respondent Veintimilla received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2012. He has been awarded one medal for Meritorious Police Duty and one Commendation. [REDACTED]

[REDACTED]. He has no prior formal disciplinary record.

For your consideration.

Amy Porter RM

Amy J. Porter
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL McDONALD
TAX REGISTRY NO. 940445
DISCIPLINARY CASE NOS. 2012-7349 & 2012-8693

In 2014, Respondent McDonald received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated 2.5 "Competent/Below Competent" in 2012 and 2013. [REDACTED]

[REDACTED]
[REDACTED]. He has no prior formal disciplinary record.

For your consideration.

Amy Porter RM

Amy J. Porter
Assistant Deputy Commissioner – Trials